

# WITHHOLDING FACTS

The Official Information Act was intended to guarantee the public ready access to government information. So why has it taken one lobby group more than four years to get information that's heavily censored and almost two years out of date?

by Bruce Ansley

**T**HE CLEAR BLUE light of battle flickers in Murray Horton's eyes as strongly as always, but there's an amused weariness that wasn't there 20 years ago. Horton's shoulder-length blond hair and doggedly unruly gear in some way let you know he has earned his stripes. As he has. Horton was among the founders of the Progressive Youth Movement, the members of which a younger Robert Muldoon found so threatening to the New Zealand way of life, if not Western civilisation. The PYM are now preparing for their 20th anniversary reunion at Labour Weekend. Horton has been arrested any number of times in as many causes. He is secretary of the Campaign Against Foreign Control of Aotearoa (Cafca).

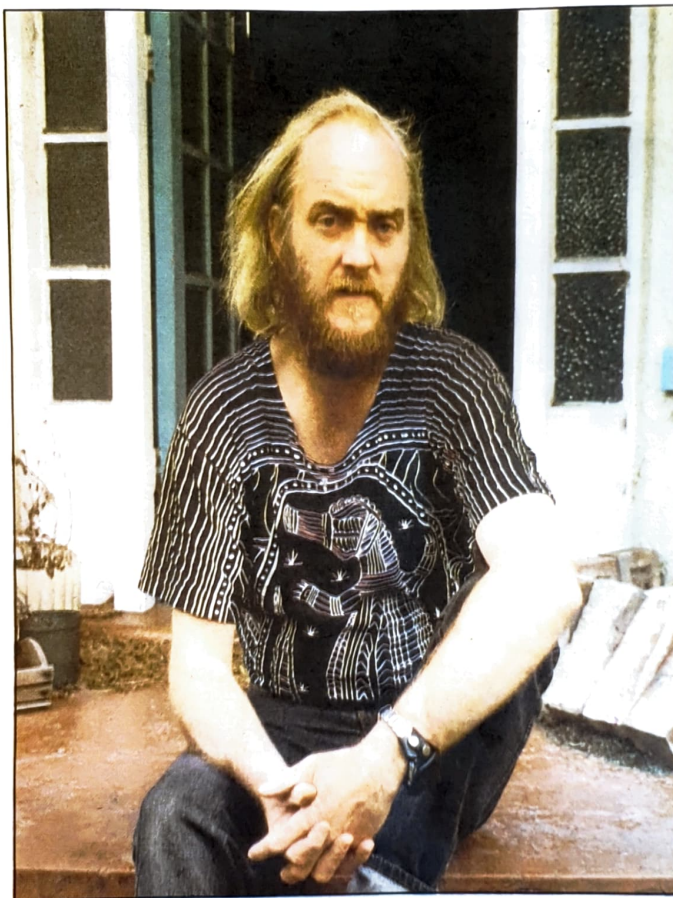
The Overseas Investment Commission occupies a suite of offices at No 2, the Terrace, Wellington. The address is better known for the Reserve Bank, which funds the OIC. The commission vets foreigners who want to invest in New Zealand. Despite the public interest in this task, it works in comparative secrecy. It publishes no annual report or regular account of its activities. An annual list of statistics of limited value is available. The OIC is not the only source of information on foreign investment, but it is a valuable one.

Horton's organisation is dedicated to keeping foreign bosses out. The commission is equally devoted to smoothing foreign investors' way in. Cafca wanted to know exactly what the OIC was up to.

The public's right to know is enshrined in the Official Information Act. The fundamental principle of the act is that official information should be made available unless there is good reason for withholding it. The OIC is covered by the act but it managed to think of six good reasons for keeping mum. In four years of dogged persistence by both Cafca and the Ombudsman's Office, those six reasons were whittled down to one — the cost of assembling the information. The OIC decided to ration its intelligence in a way more in keeping with the spirit of the times — by price. It wanted more money for its information than most individuals or non-commercial organisations could reasonably afford.

When the Ombudsman ruled that the OIC could not adopt that tactic either, the commission grudgingly released information that was almost two years old and is refusing to give any more. It is now issuing proceedings in the High Court against both the Ombudsman and Horton, seeking a judicial review.

**P**RISSING INFORMATION out of the OIC has taken countless hours of the



Cafca secretary Murray Horton: wanting to know exactly what the OIC was up to.

commission's, the Ombudsman's and Cafca's time over a period of more than four years. Cafca first wrote to the OIC on February 18, 1985, asking to be kept informed of each month's applications for foreign investment received by the commission, and the outcomes. The commission refused and, although the Ombudsman came to Cafca's aid, spent the next two years stalling.

The Ombudsman, meanwhile, was toying and fro-ing between Cafca and the OIC, but making little progress until April 1987, when a new ombudsman, Nadja Tollemache, came onto the case. Tollemache found that the OIC had a new procedure for dealing with applications for foreign investment. For each application it produced a decision sheet containing most of the information Cafca wanted. Why not take these decision sheets each month and haggle over the price with the OIC?

So Cafca did. Presto — the OIC replied, on July 21, 1987, saying it would hand over the decision sheets for that August (within 20 days, the maximum delay allowed under the 1986 amendment to the Official Information Act) and

promising to keep charges for this service "as low as achievable". Cafca, it seemed, had opened the oyster.

That September the OIC wrote again. It had the information. It also had the bill: \$363. That was for August. The commission expected the monthly charge to be between \$400 to \$500 from then on.

Cafca has only 250 members, including its most distinguished, David Caygill, the Minister of Finance — who prefers to be known as a subscriber to the organisation's journal, *Foreign Control Watchdog*, rather than a member. Each member pays \$10 a year. A few donations round out Cafca's income to about \$3000 in a good year. The OIC fees would have cleaned it out in six months.

Cafca went back to the Ombudsman, arguing that the charge was prohibitive. After all, Cabinet guidelines for charging under the Official Information Act urge, in spirit, that information-seekers should not be stung too hard. "The charge," they say, "should represent a reasonable fee for access given." It should not, for example, include fees for time spent deciding whether the information should be given out at all, or in what form.

Another 16 months slid by, awash with letters and responses, arguments and counter-arguments. Finally, last January, the long-suffering Tollemache produced a 20-page report.

Faced with Cafca's persistence, the OIC had begun telling foreign applicants that the information they supplied might have to be released under the Official Information Act. It asked if they had any objection. (Cafca is bitter about this. It points out that foreign investors pay nothing for the commission's services, whereas the native Cafca is expected to pay plenty. When the foreigners are invited to vet the information as well... insult to injury. The commission, though, argues that parties supplying sensitive commercial information should not be compromised.)

At the end of the month, a senior clerk went through the objections and decided what should and should not be released, a time-consuming process, charged at \$30 an hour with one hour free.

Tollemache would not allow the bill for that one, arguing that Cafca should not have to pay for the OIC to make up its mind whether to meet its obligations under the Official Information Act. She thought the commission's process could be sped up too. But before she could decide what *would* be a reasonable charge, she came across something else. The Overseas Investment Commission, by an oversight, had no legal authority to charge anyone for anything. In fact, the OIC's proposed charge for information "appears to have been contrary to law".

In February the OIC finally sent Cafca the information, free. It covered only the month of August 1987 and, despite its age, 25 deletions had been made. The most entertaining decision that month was the takeover by the Australian-controlled Transpac Holdings of all or part of several New Zealand companies, because "it is felt that the merger of these road transport companies will provide the first major step in rationalisation of the transport industry since deregulation." Transpac is now in receivership.

No further information would be supplied, said OIC secretary Paul Tindill, because the Ombudsman's decision applied only to that month and, in any event, the OIC was taking the whole business to the High Court for review.

Meanwhile, Cafca is again appealing to the Ombudsman, and Tollemache is continuing her inquiries. Two OIC secretaries, three ombudsmen, one amendment to the Official Secrets Act and four years, two months from the first request, the question has yet to be answered: is open government, like everything else, on the market?

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